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Trade Policy Monitoring

ANTI-DUMPING ORDINANCE

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Report Highlights:

On May 12, 2004 the President of the Socialist Republic of Vietnam promulgated the Ordinance on Anti-Dumping of Imports into Vietnam. These new law was passed by the Standing Committee of the XIth National Assembly of the Socialist Republic of Vietnam on April 29, 2004. The Anti-Dumping Ordinance will be effective from October 1, 2004

Includes PSD Changes: No
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CHAPTER I: GENERAL PROVISIONS**Article 1: Scope of regulation**

This Ordinance provides for anti-dumping measures; procedures and contents of investigation for application, and application of such measures to imports dumped into Vietnam

Article 2: Interpretation of terms

In this Ordinance, the following terms are construed as follows:

- 1) Anti-dumping tax means an additional import tax imposed on imports dumped into Vietnam, which causes or threatens to cause material injury to a domestic industry.
- 2) Dumping margin means the calculable difference between the normal prices and the export prices of goods imported into Vietnam.
- 3) Negligible dumping margin means a dumping margin, which is no more than 2% of the export prices of goods imported into Vietnam
- 4) Immaterial volume, quantity or value of imports dumped into Vietnam means a volume, quantity or value of imports dumped into Vietnam, which satisfies the following conditions:
 - a/ The volume, quantity or value of goods dumped from one country does not exceed 3% of the total volume, quantity or value of the like goods imported into Vietnam.
 - b/ The total of the volumes, quantities or values of goods dumped from many countries, which satisfy the condition set at Point a of the Clause, does not exceed 7% of the total volume, quantity or value of the like goods imported into Vietnam.
- 5) Domestic industry means a group of domestic producers or their representatives that produce a volume, quantity or value of goods accounting for a major proportion in the total volume, quantity or value of domestically produced the like goods under the condition that these producers do not import, and have no direct alignment relations with the organizations or individuals exporting or importing the goods which are requested for application of anti-dumping measures.
- 6) Like goods mean goods bearing all of their characteristics resembling goods which are requested to be subject to the application to the application of anti-dumping measures or , in the absence of such goods, mean goods having many of their basic characteristics resembling goods which are requested to be subject to the application of anti-dumping measures.
- 7) Material injury to a domestic producing industry means the state of significant decline or growth restriction in terms of capacity, price and sale of goods, profit, production development rate, employment, investment and other indexes of the domestic industry, or the state of retardation of the formation of a domestic industry.
- 8) Threat to cause material injury to a domestic industry means an imminent, apparent and provable possibility to cause material injury to a domestic industry.

Article 3: Determination of imports dumped into Vietnam

- 1) Goods originated from a country or territory shall be regarded at a dumping price when imported into Vietnam as sold at dumping price when imported into Vietnam (hereinafter called goods dumped into Vietnam) if such goods are sold at a price lower than the normal price prescribed in Clause 2 and Clause 3 of this Article.
- 2) The normal price of an import into Vietnam is a comparable price of the like goods currently on sale on the domestic market of the exporting country or territory under normal commercial conditions.
- 3) In cases when there are no like goods on sale on the domestic market of the exporting country or territory or there are like goods on sale on the domestic market of exporting country or territory but in a negligible volume, quantity or value, the normal prices of the imports into Vietnam shall be determined in either of the following two ways:
 - a/ The comparable prices of the like goods of exporting country or territory, which are on sale on the market of a third country under normal commercial conditions.
 - b/ The reasonable costs of the goods plus other reasonable expenses as well as reasonable profits, determined at each stage from production to circulation on the market of the exporting country or territory or of a third country.

Article 4:- Anti-dumping measures

- 1) Application of anti-dumping tax
- 2) Commitments to take measures to preclude dumping, made by organizations or individuals producing and/ or exporting the goods which are requested for application of anti-dumping measures with Vietnamese State bodies competent to apply anti-dumping measures or with domestic producers if it is so approved by Vietnamese State bodies competent to apply anti-dumping measures.

Article 5: Principles for application of anti-dumping measures

- 1) Anti-dumping measures shall be applied at a necessary and reasonable level only in order to prevent or limit material injury to the domestic industries
- 2) The application of anti-dumping measures shall be effected only after investigation has been conducted and must be based on the investigation conclusions prescribed in Chapter II of this Ordinance.
- 3) Anti-dumping measures shall only be applied directly to the imports dumped into Vietnam under the provisions of the Ordinance.
- 4) The application of anti-dumping measures must not cause harm to the national socio-economic interests.

Article 6:- Conditions for application of anti-dumping measures

Anti-dumping measures shall be applied to goods dumped into Vietnam only when there exist the following two conditions:

- 1) The goods dumped into Vietnam and the dumping margin must be specially determined;
- 2) The dumping of goods prescribed in Clause 1 of this Article constitutes the cause of, or the threat to cause, material injury to the domestic industries.

Article 7:- State management responsibility for anti-dumping

- 1) The Government shall perform the uniform State management over anti-dumping of imports into Vietnam
- 2) The Government shall set up, and specify the organizations apparatuses, functions, tasks and powers of, anti-dumping bodies under the Ministry of Trade, including:
 - a/ The anti-dumping investigation agency (hereinafter called the investigation agency), which shall investigate and look into anti-dumping cases and, when necessary, propose the Trade Minister to issue decisions to apply provisional anti-dumping taxes;
 - b/ The Council for handling of anti-dumping cases, which shall consist of a number of standing members and other members who shall work on each case to review the conclusions of the investigation agency, discuss and decide by majority on whether the goods are dumped into Vietnam or not, causing or threatening to cause material injury to the domestic industries; and propose the Trade Ministry to issue decisions to apply anti-dumping taxes.
- 3) The Trade Ministry shall be responsible before the Government for performing the State management over anti-dumping, decide on the application of anti-dumping measures and bear responsibility for such decisions.
- 4) The Ministries, the ministerial – level agencies and the provincial/municipal People Committees shall, within the scope of their respective tasks and powers, have to coordinate with the Trade Ministry in performing the State management over anti-dumping measures and applying anti-dumping measures.

CHAPTER II: INVESTIGATION FOR APPLICATION OF ANTI-DUMPING MEASURES**Article 8: Grounds for investigation**

- 1) The investigation for application of anti-dumping measures shall be conducted when dossiers of request for application of anti-dumping measures are filed by organizations or individuals representing the domestic industries

Organizations or individuals filing dossiers of request for application of anti-dumping measures shall be regarded as representatives of a domestic industry when there exist the following two conditions:

- a/ The volume, quantity or value of goods they produce or represent accounts for at least 25% of the total value, quantity or value of the like goods of the domestic industry
 - b/ The volume, quantity or value of goods prescribed at Point a of this Clause and of the domestic producers that support the filing of dossiers of request for application of anti-dumping measures must be bigger than the volume, quantity or value of the like goods of domestic producers that oppose the requests for application of anti-dumping measures.
- 2) The Trade Minister may issue investigation decisions when there are clear evidences that the dumping of goods causes or threatens to cause material injury to a domestic industry.

Article 9:- Dossiers of request for application of anti-dumping measures

A dossier of request for application of anti-dumping measure, which shall be addressed to the investigation agency, comprises:

- 1) The written request for application of anti-dumping measures, including the following contents:
 - a/ The name, address and other necessary information of the organization or individual filing the request for application of anti-dumping measures;
 - b/ Description of imports which are requested to be subject to the application of anti-dumping measures, stating names of the goods, their basic characteristics and main use purpose, their codes according to the current import tariffs, the currently applied import tax rates, and the import origins;
 - c/ The description of the volume, quantity and value of the imports stated at Point b of this Clause within twelve months before the dossier of request for application of anti-dumping measures is filed;
 - d/ Description of the volume, quantity and value of the like domestically produced within twelve months before the dossier of request for application of anti-dumping measures filed;
 - e/ Information on the normal prices and export prices of the goods described under the provisions of Point b of this Clause at the same time of their importation into Vietnam within twelve months before the dossier of request for application of anti-dumping measures is filed;
 - f/ The dumping margin of the imports requested to be subject to the application of anti-dumping measures;
 - g/ Information, data and proofs on the material injury which the goods dumped into Vietnam cause or threaten to cause the domestic industry in question;
 - h/ The name, address and other necessary information of the organization and /or individual producing and exporting into Vietnam the goods requested to be subject to the application of anti-dumping measures;
 - i/ The specific request regarding the application of anti-dumping measures, the application time limit and extent;
- 2) Other relevant documents and information, which are deemed necessary by the organization or individual requesting the application of anti-dumping measures.

Article 10:- Decision on investigation for application of anti-dumping measures

- 1) Within fifteen days after receiving the dossiers of request for application of anti-dumping measures, if deeming that such dossiers fail to full contain the contents prescribed in Article 9 of the Ordinance, the investigation agency must inform the filing organization or individual thereof for supplementation.
- 2) The time limit for dossier supplementation shall be set by the investigation agency but must not be shorter than thirty days as from the date the organization or individual receives the dossier supplementation notice.

- 3) Before the Trade Minister issues investigation decisions, the investigation agency must notify Vietnamese anti-dumping regulations to the competent authorities of the countries or territories the export of the goods requested to be subject to the application of anti-dumping measures.
- 4) Within sixty days as from the date of receiving the dossiers with the full contents prescribed in Article 9 of this Ordinance, the Trade Minister shall issue investigation decisions; in special cases, the time limit for issuance of investigation decisions may be extended for no more than thirty days.
- 5) Within fifteen days as from the date of issuance of the decisions on investigation for application of anti-dumping measures, the investigation agency shall notify the investigation decision to the organizations or individuals requesting the application of anti-dumping measures; the producers, exporters and competent authorities of the countries or territories that export the good requested for application of anti-dumping measures and announce them to the involved parties.
- 6) The Trade Minister must not issue investigation decisions if the organizations or individuals requesting the application of anti-dumping measures withdrawn their dossiers, except for the case specified in Clause 2, Article 8 of this Ordinance.

Article 11:- Parties involve in the investigation process

The parties involved in the investigation process include:

- 1) Organizations, individuals filing dossiers of request for application of anti-dumping measures
- 2) Foreign organizations, individuals producing or exporting good requested for application of anti-dumping measures
- 3) Organizations, individuals importing goods requested for application of anti-dumping measures;
- 4) Domestic organizations, individuals producing like goods;
- 5) Domestic business associations representing the majority of organizations, individuals producing and /or importing the like goods
- 6) Foreign business associations representing the majority of organizations, individuals producing and /or exporting the goods requested for application of anti-dumping measures.
- 7) Trade union or other organizations representing the interests of laborers in the domestic industries
- 8) Organizations protecting consumers' interests
- 9) Competent Vietnamese State bodies
- 10) Competent authorities of the countries or territories exporting the goods requested for application of anti-dumping measures;
- 11) Other organizations, individuals that have their rights and interests involved in the investigation process

Article 12:- Contents of investigations for application of anti-dumping measures

1. Determining the goods dumped into Vietnam and the dumping margin
2. Determining the material injury or the threat to cause material injury to the domestic industries on the basis of examining the following contents:

a/ The volume, quantity or value of the goods dumped into Vietnam, compared with volume, quantity or value of the like goods domestically produced or sold, which has been increasing significantly in absolute or relative terms;

b/ Prices effects of the goods requested for application of anti-dumping measures on the reduction of, or the restriction of the possibility to reasonably increase, the prices of the domestic like goods;

c/ Adverse impacts on the domestic industries or on the formation of the domestic industries

3. The link between the dumping of goods into Vietnam and the material injury or the threat to cause material injury to the domestic industries

Article 13:- Supply of information, documents in the investigating process

1. The parties involve in the investigation process prescribed in the Article 11 of this Ordinance shall have to supply truthful information and necessary documents at the request of the investigation agency.
2. Where necessary information or documents are not supplied as requested, the investigation agency shall make decisions on the basic of available information and documents.

Article 14:- Consultation

1. The investigation agency shall organize consultations with the parties involved in the investigation process prescribed in Article 11 of this Ordinance in order to create conditions for the parties to express their opinions and supply necessary information
2. The parties involved in the investigation process are not obliged to attend consultation meetings; if any party is absent from consultation meetings, its interests related to the application of anti-dumping measures will be assured
3. Consultations must not obstruct the investigation process and the application of anti-dumping measures prescribed in this Ordinance.

Article 15:- Confidentiality

1. The investigation agency shall be responsible for keeping confidential information supplies to it when receiving justified requests of the parties involved in the investigation process and request these parties to supply brief information which needs to be kept confidential.
2. The parties involved in the investigation process may have access to information already supplied to the investigation agency, excluding information which needs to be kept confidential.

Article 16:- Investigation time limit

1. The time for investigation for application of anti-dumping measures shall not exceed twelve months as from the date of issuance of investigation decisions.
2. In special cases, the Trade Minister may decide to extend the investigation time limit for no more than six months

Article 17:- Preliminary conclusions

1. Within ninety days as from the date of issuance of investigation decisions, the investigation agency shall publicize the preliminary conclusions on the contents related to the investigation process prescribed in Article 12 of this Ordinance; in special cases, the time limit for publication of preliminary conclusions may be extended for no more than sixty days
2. Preliminary conclusions and major grounds for making such preliminary conclusions must be publicized by appropriate modes to the parties involved in the investigation process.

Article 18:- Final conclusions

1. After completing the investigation process, the investigation agency shall publicize its final conclusions on the contents related to the investigation process prescribed in Article 12 of this Ordinance,
2. The final conclusions and major grounds for making such final conclusions must be publicized by appropriate modes to the parties involved in the investigation process.

Article 19:- Termination of investigation

The Trade Minister shall decide to terminate investigation in the following cases:

1. Organizations or individuals that have filed dossiers of request for application of anti-dumping measures voluntarily withdrawn their dossiers;
2. Preliminary conclusions prescribed in Article 17 of this Ordinance contain at least one of the following contents:
 - a/ There is no dumping as prescribed in the Article 3 of this Ordinance;
 - b/ The dumping margin is negligible
 - c/ The volume, quantity and value of the goods dumped into Vietnam is negligible
 - d/ There is no material injury or no threat to cause material injury to the domestic industries

CHAPTER III: APPLICATION OF ANTI-DUMPING MEASURES**Article 20:- Application of provisional anti-dumping taxes**

1. After sixty days as from the date of issuance of investigation decision, on the basis of the preliminary decisions, on the basis of the preliminary conclusions, the Trade Minister may issue decisions to impose provisional anti-dumping taxes.
2. The rates of provisional anti-dumping taxes must not exceed the dumping margin determined in the preliminary conclusions.

3. The payment of provisional anti-dumping taxes may be secured with cash deposits or by other measures as prescribed by law.
4. The time limit for application of provisional anti-dumping taxes must not exceed one hundred and twenty days as from the date of issuance of decisions on the application of this measures
5. At the requests of the exporters of the like goods, the Trade Minister may extend the time limit for application of provisional anti-dumping taxes for no more than sixty days

Article 21:- Application of commitment measures

1. After the preliminary conclusions are made available and before termination of the investigation process, organizations or individuals producing or exporting the goods under investigation may make commitments with the Trade Ministry or domestic producers on one the following contents:
 - a/ To adjust the selling prices
 - b/ To voluntarily restrict the volume, quantity or value of the goods dumped into Vietnam
2. The Trade Minister may accept or reject or request adjustment of the commitment contents but must not force the parties to make such commitments
3. The investigation agency shall make public the commitment's contents to the parties involved in the investigation process
4. In case of rejecting the commitments of the involved parties, the Trade Minister must notify the reasons therefore and order the investigation to be continued for application of anti-dumping measures according to the provisions of this Ordinance.
5. The Trade Minister shall issue decisions to cease the anti-dumping investigation and apply the commitment measure if deeming that the realization of such commitments shall not cause or threaten to cause material injury to the domestic industries.

The committing parties must periodically supply the investigation agency with information and documents on the realization of their commitments and approve the accuracy of such information under decisions of the Trade Minister.

6. Where the involved parties fail to properly realize their commitments, causing or threatening to cause material injury to the domestic industries, the Trade Minister shall issue decisions to resume the investigation or application of anti-dumping measures or issue decisions to apply anti-dumping measures as provided for by this Ordinance

Article 22:- Application of anti-dumping taxes

1. Where the commitments prescribed in Article 21 of this Ordinance cannot be fulfilled, on the basis of the final conclusions and proposals of the Council for handling of anti-dumping cases, the Trade Minister shall issue decisions to impose or not to impose anti-dumping taxes
2. The rates of anti-dumping taxes must not exceed the dumping margins determined in the final conclusions.
3. The time limit for application of anti-dumping taxes shall not exceed five years as from the date of issuance of the decisions to apply anti-dumping measures.

4. The time limit for application of anti-dumping taxes may be extended in cases where the Trade Minister issues decisions to review the application of anti-dumping taxes as provided or in Chapter IV of this Ordinance.
5. The investigation agency shall notify by appropriate modes the decisions to impose or not to impose anti-dumping taxes to the parties involved in the investigation process.

Article 23:- Retrospective application of anti-dumping taxes

1. Where the final conclusions determine that there is material injury or a threat to cause material injury to the domestic industries and the provisional anti-dumping taxes have been applied before the final conclusions are made, anti-dumping taxes shall be applied retrospectively.
2. The anti-dumping taxes shall be retrospectively applied to the imports for ninety days back before the application of the provisional anti-dumping taxes if there exist the following two conditions:
 - a/ The imports are sold at dumping prices;
 - b/ The volume, quantity or value of the goods sold at dumping prices into Vietnam surge suddenly, causing hardly remediable injury to the domestic industries.
3. Any tax difference shall not be retrospectively collected when the applied anti-dumping tax rate stated in the final conclusion is higher than the provisional anti-dumping tax rate prescribed in Article 20 of this Ordinance.
4. Any tax difference shall be refunded when the applied anti-dumping tax rate stated in the final anti-dumping conclusion is lower than the provisional anti-dumping tax rate prescribed in Article 20 of this Ordinance.
5. Where the Trade Minister issues decisions not to impose anti-dumping taxes, the provisional anti-dumping taxes are already collected or amounts deposited to secure the payment of provisional anti-dumping taxes prescribed in Article 20 of this Ordinance shall be refunded.

CHAPTER IV: REVIEW OF APPLICATION OF ANTI-DUMPING MEASURES

Article 24:- Review of the application of anti-dumping measures

1. After one year, as from the date of issuance of the decisions to apply anti-dumping measures, the Trade Minister shall be entitled to review the application of such anti-dumping measures when it is so requested by one or many of the involved parties prescribed in Article 11 of this Ordinance and on the basis of examining the proofs supplied by the requesting party (ies).
2. One year before the expiry of the decisions to apply anti-dumping measures, the Trade Minister shall issue decisions to review the application of such anti-dumping measures.
3. The investigation agency shall review the application of anti-dumping measures according to the provisions of Article 9, 10, 11, 12, 13, 14 and 15 of this Ordinance
4. The carrying out of procedures related to the review process must not obstruct the current application of anti-dumping measures.

5. The time limit for reviewing the application of anti-dumping measures prescribed in Clause 1 and Clause 2 of this Article shall not exceed twelve months as from the date of issuance of the review decisions.

Article 25:- Decisions of the results of review of the application of ant-dumping measures

At the end of the review of the application of anti-dumping measures, the Trade Minister shall issue one of the following decisions:

1. To continue, or extend the time limit for, the application of anti-dumping measures;
2. To adjust the anti-dumping tax rates as appropriate to the review results;
3. To terminate the application of anti-dumping measures

CHAPTER V: COMPLAINTS AND HANDLING OF VIOLATIONS**Article 26:- Complaints, lawsuits**

1. Within sixty days as from the date the Trade Minister issues the decisions to apply anti-dumping measures, if the parties involved in the investigation process and the application of anti-dumping measures disagree with such decisions, they may lodge complaints with the Trade Minister.
2. Within sixty days as from the date of receiving complaints, the Trade Minister shall have to settle them; in special cases, the time limit for settling complaints may be extended for no more than sixty days and such must be notified by appropriate modes to the complaining organizations or individuals.
3. Past the time limit in Clause 2 of this Article, if the Trade Minister fails to issue decisions to settle their complaints or the complaining organizations or individuals disagree with the Trade Minister's decisions to settle their complaints, they may initiate lawsuits at courts according to Vietnamese law provisions.

Article 27:- Settlement of dispute and handling of violations.

The settlement of dispute and the handling of violations of the legislation on anti-dumping of goods into Vietnam shall comply with Vietnamese laws; if international agreements which Vietnam has signed or acceded to otherwise provide for, such international agreements shall apply.

CHAPTER VI: IMPLEMENTATION PROVISIONS**Article 28:- Implementation effect**

This Ordinance takes effect as from October 1, 2004

Article 29:- Implementation guidance

The Government and the Supreme People's Court shall, within the scope of their respective tasks and powers, details and guide the implementation of this Ordinance.

(Source: Vietnam's Official Gazette, No.18 /May 26, 2004)